

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

ROLANDO ORTEGA-CANDELARIA,

Plaintiff,

v.

JOHNSON & JOHNSON, et al.,

Defendants.

Civil No. 08-2382 (JAF)

**OPINION AND ORDER**

Plaintiff, Rolando Ortega-Candelaria, brings this action against Defendants, OrthoBiologics LLC ("Ortho") and Medical Card Systems, Inc., alleging breach of fiduciary duties and claiming entitlement to benefits under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1109, 1132(a)(1)(B). (Docket No. 1.) Defendants move to dismiss under Federal Rule of Civil Procedure 12(b)(6). (Docket No. 17.) Plaintiff opposes the motion (Docket No. 18), Defendants reply (Docket No. 23), and Plaintiff sur-replies (Docket No. 33).

**I.**

**Factual and Procedural Synopsis**

As we convert Defendants' motion into one for summary judgment, we derive the following facts from the parties' motions, statements of uncontested material facts, and exhibits. (Docket Nos. 17, 18, 23, 28, 29, 33, 36.)

Plaintiff was an employee of Ortho who qualified as a beneficiary under the Long Term Disability Income Plan for Employees

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1 of Johnson and Johnson and Affiliated Companies in Puerto Rico ("LTD  
2 Plan"). Dated July 1, 2004, the LTD Plan provided that "[a]ny lawsuit  
3 filed by or on behalf of a Participant regarding the denial of a  
4 claim . . . may not be commenced later than twelve months following  
5 the date of the notice of that final determination." (Docket No. 17-2  
6 at 17.) A prior, obsolete version of the plan dated January 1, 2002,  
7 did not include the twelve-month limitation, but advised readers that  
8 "[t]he Plan and the Trust agreement may be amended . . . at any time  
9 and from time to time." (Docket No. 18-4 at 21.)

10 Plaintiff has been unable to work since December 18, 2002, on  
11 account of constant pain due to vertebral herniations. He has  
12 requested payments of benefits under the LTD Plan from Defendants  
13 since 2003, which Defendants have denied. On January 26, 2005,  
14 Defendants reaffirmed their denial of benefits.

15 Plaintiff filed the instant case in federal district court on  
16 December 14, 2008. (Docket No. 1.) On April 7, 2009, Defendants moved  
17 to dismiss. (Docket No. 17.) Plaintiff opposed on April 21, 2009  
18 (Docket No. 18), Defendants replied on May 11, 2009 (Docket No. 23),  
19 and Plaintiff sur-replied on May 28, 2009 (Docket No. 33).

## 20 II.

### 21 Conversion to Motion for Summary Judgment

22 If "matters outside the pleadings are presented" in a motion  
23 under Rule 12(b)(6) and considered by the court, "the motion must be  
24 treated as one for summary judgment under Rule 56." Fed. R. Civ.

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1 P. 12(d). The court may convert the motion sua sponte without  
2 "express notice . . . if the surrounding circumstances effectively  
3 place the parties on notice that the court has the option of treating  
4 the motion as a motion for summary judgment and the parties have been  
5 given 'reasonable opportunity to present all material made pertinent  
6 to such a motion by Rule 56.'" C.B. Trucking, Inc. v. Waste Mgmt.,  
7 Inc., 137 F.3d 41, 43 (1st Cir. 1998) (quoting Rodríguez v. Fullerton  
8 Tires Corp., 115 F.3d 81, 83 (1st Cir. 1997)). The parties annexed  
9 competing versions of the LTD Plan to their briefs (Docket Nos. 17-2,  
10 18-4) and are, thus, aware that we must consider matters outside the  
11 pleadings to resolve the motion to dismiss. We, therefore, convert  
12 this motion to one for summary judgment.

13 We grant a motion for summary judgment "if the pleadings, the  
14 discovery and disclosure materials on file, and any affidavits show  
15 that there is no genuine issue as to any material fact and the movant  
16 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).  
17 A factual dispute is "genuine" if it could be resolved in favor of  
18 either party, and "material" if it potentially affects the outcome of  
19 the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st  
20 Cir. 2004).

21 The movant carries the burden of establishing that there is no  
22 genuine issue as to any material fact; however, the burden "may be  
23 discharged by showing that there is an absence of evidence to support  
24 the non-movant's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325,

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1 331 (1986). The burden has two components: (1) an initial burden of  
2 production, which shifts to the non-movant if satisfied by the  
3 movant; and (2) an ultimate burden of persuasion, which always  
4 remains on the movant. Id. at 331.

5 In evaluating a motion for summary judgment, we view the record  
6 in the light most favorable to the non-movant. Adickes v. S.H. Kress  
7 & Co., 398 U.S. 144, 157 (1970). However, the non-movant "may not  
8 rely merely on allegations or denials in its own pleading; rather,  
9 its response must . . . set out specific facts showing a genuine  
10 issue for trial." Fed. R. Civ. P. 56(e)(2). In rare situations, we  
11 may grant summary judgment sua sponte, provided that discovery has  
12 sufficiently progressed to determine relevant facts and the target  
13 has at least ten days' notice to contest the impending judgment.  
14 Stella v. Town of Tewksbury, 4 F.3d 53, 55-56 (1st Cir. 1993).

### 15 III.

#### 16 Analysis

17 Defendants contend that the statutes of limitations under ERISA  
18 and Puerto Rico law, as modified by the LTD Plan, bar Plaintiff's  
19 claims. (Docket No. 17.) We address, in turn, Plaintiff's claims for  
20 breach of fiduciary duty and benefits under the LTD Plan.

#### 21 **A. Breach of Fiduciary Duty**

22 We note that Plaintiff's complaint alleges no facts in support  
23 of a claim for breach of fiduciary duty (see Docket No. 1), which is  
24 ordinarily insufficient to state a legally-cognizable claim for

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1 relief, see Gagliardi v. Sullivan, 513 F.3d 301, 305 (1st Cir. 2008).  
2 However, as Defendants do not move to dismiss on this basis, we  
3 address their argument under the time bar. (Docket No. 17.)

4 ERISA permits beneficiaries of employee benefits plans to  
5 recover for a defendant's breach of fiduciary duty. 29 U.S.C.  
6 §§ 1109(a), 1132(a)(2). This cause of action is subject to an  
7 explicit limitations provision, under which no action may be brought

8 after the earlier of -

9 (1) six years after (A) the date of the last  
10 action which constituted a part of the breach or  
11 violation, or (B) in the case of an omission,  
12 the latest date on which the fiduciary could  
13 have cured the breach or violation, or

14 (2) three years after the earliest date on which  
15 the plaintiff had actual knowledge of the breach  
16 or violation . . . .

17 Id. § 1113.

18 Plaintiff does not identify the duty allegedly breached by  
19 Defendants or when he became aware of this breach; he simply accuses  
20 them of violating the LTD Plan by denying him benefits. (Docket  
21 No. 1.) Plaintiff was aware of the breach by January 26, 2005, at the  
22 latest, when Defendants notified him of their final decision to deny  
23 him benefits under the LTD Plan, as Plaintiff alleges no facts beyond  
24 this date. (Id.) Therefore, the limitations period for Plaintiff's  
25 fiduciary claim expired on January 26, 2008, or three years after he  
26 had actual knowledge that Defendants had breached the LTD Plan. See  
27 29 U.S.C. § 1113(2). As Plaintiff did not commence this case until

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1 December 14, 2008 (Docket No. 1), any claim for breach of fiduciary  
2 duty under ERISA is temporally barred.

3 **B. Recovery of Benefits under LTD Plan**

4 Plaintiff argues that the limitations period under the LTD Plan  
5 cannot apply, as he did not receive notice of the relevant laws  
6 pertaining to statute of limitations in ERISA cases and that  
7 Defendants had not apprised him of the amendment to the LTD Plan  
8 which imposed a modified limitations period. (Docket No. 18.)

9 ERISA permits beneficiaries to recover denied benefits under  
10 ERISA plans. 29 U.S.C. § 1132(a)(1)(B). As ERISA does not provide a  
11 statute of limitations for this form of relief, "federal courts  
12 borrow the relevant statute of limitations from the forum state,"  
13 usually by analogy to the forum's substantive law of contracts.  
14 Island View Residential Treatment Ctr. v. Blue Cross Blue Shield of  
15 Mass., Inc., 548 F.3d 24, 27 (1st Cir. 2008) (citing Edes v. Verizon  
16 Commc'n, Inc., 417 F.3d 133, 138 (1st Cir. 2005)).

17 Accordingly, we look to the Puerto Rico statute of limitations  
18 for contracts, see Nazario-Martínez v. Johnson & Johnson Baby Prods.,  
19 Inc., 184 F. Supp. 2d 157, 161-62 (D.P.R. 2002), which provides for  
20 a fifteen-year limitations period, 31 L.P.R.A. § 5294 (2006). This  
21 fifteen-year period is a statutory default which parties to a  
22 contract may generally modify. R.P. Farnsworth & Co. v. P.R. Urban  
23 Renewal & Hous. Corp., 289 F. Supp. 666, 668-69 (D.P.R. 1968)  
24 (citing, inter alia, 12 Manresa, Comentarios al Código Civil 937

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1 (1951)). A contractual modification creates a period of "caducity"  
2 under the civil law, which "admit[s] no interruption. [Its]  
3 extinguishing or barring effect is absolute and runs automatically  
4 with time." Id. at 669. Caducity precludes judicial tolling. Prime  
5 Retail, L.P. v. Caribbean Airport Facilities, Inc., 975 F. Supp. 148,  
6 153 (D.P.R. 1997).

7 In the case at bar, Defendant has shown that the controlling LTD  
8 Plan expressly limits claims for denial of benefits to one year after  
9 notification of the denial. (Docket No. 17-2 at 17.) As Plaintiff  
10 received notice on January 26, 2005, the modified period expired on  
11 January 26, 2006, well before this action was filed on December 14,  
12 2008. (See Docket No. 1.)

13 Plaintiff does not dispute the validity of the LTD Plan. (See  
14 Docket Nos. 18, 33.) Rather, Plaintiff suggests that equitable  
15 estoppel should apply because Defendants did not apprise him of the  
16 law on statute of limitations or make him aware of the amended clause  
17 in the LTD Plan pertaining to the twelve-month limitations period.  
18 (Docket No. 18.)

19 These arguments are unavailing, as Defendants have no duty to  
20 instruct Plaintiff on the law. Absent a showing of material  
21 misrepresentations by Defendants, there is no fraud. Rather,  
22 Plaintiff had a duty to read the terms of his agreement and LTD Plan.  
23 Plaintiff may not rely on an outdated copy of the plan from 2002 when  
24 it expressly warned that it could be amended at any time (Docket

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1 No. 18-4 at 21), and Plaintiff had every opportunity to inquire and  
2 procure a current version of the LTD Plan in January 2005 when  
3 Defendants gave final notice of their denial of benefits.

4 **IV.**

5 **Conclusion**

6 In view of the foregoing, we hereby **GRANT** Defendants' motion for  
7 summary judgment (Docket No. 17), and **ORDER** the entry of judgment  
8 dismissing the complaint with prejudice.

9 **IT IS SO ORDERED.**

10 San Juan, Puerto Rico, this 25<sup>th</sup> day of June, 2009.

11 S/José Antonio Fusté  
12 JOSE ANTONIO FUSTE  
13 Chief U.S. District Judge